

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

BOBBY COIL,

Plaintiff,

v.

ORDER

12-cv-069-wmc

CAPTAIN BOISEN et al.,

Defendants.

In this civil action, plaintiff Bobby Coil alleges that various staff members at the Wisconsin Secure Program Facility (“WSPF”) violated his Eighth Amendment rights by assaulting him on one occasion and by keeping him in an observation cell without adequate clothing or access to personal hygiene. Coil was recently granted leave to proceed against many of the defendants he named on both Eighth Amendment claims. (*See* dkt. #6.) Coil has since moved for the appointment of counsel (dkt. #11). For the reasons stated below, the court will deny that motion without prejudice.

As an initial matter, civil litigants have no constitutional or statutory right to the appointment of counsel. *See Ray v. Wexford Health Sources, Inc.*, 706 F.3d 864, 866 (7th Cir. 2013); *Luttrell v. Nickel*, 129 F.3d 933, 936 (7th Cir. 1997). The court, therefore, has no power to issue an order appointing counsel to represent Coil, although the court may exercise discretion in determining whether to recruit counsel *pro bono* to assist an eligible plaintiff who proceeds under the federal *in forma pauperis* statute. *See* 28 U.S.C. § 1915(e)(1) (“The court may request an attorney to represent an indigent civil litigant *pro bono publico*.”); *Luttrell*, 129 F.3d at 936. Accordingly, this court will construe Coil’s motion

to appoint counsel as one seeking the court's assistance in recruiting a volunteer under 28 U.S.C. § 1915(e)(1).

Before deciding whether to recruit counsel, a court must find that the plaintiff has made reasonable efforts to find a lawyer on his own and has been unsuccessful, or that he has been prevented from making such efforts. *Jackson v. County of McLean*, 953 F.2d 1070, 1072-73 (7th Cir. 1992). Generally, to show compliance with this requirement, this court requires a plaintiff to submit the names and addresses of at least three attorneys from whom he has sought help and who have turned him down. Coil's motion states only that he has written some number of lawyers seeking professional legal help. He does not state how many attorneys he has written, nor does he provide the names and addresses that this court requires. To that extent, Coil has failed to show that he has made "reasonable efforts" to find counsel on his own.

Even if the court were to presume that Coil has met this threshold requirement, it would deny the motion due to the current state of this case. The relevant question in deciding whether to request counsel for an indigent civil litigant is "whether the difficulty of the case – factually and legally – exceeds the particular plaintiff's capacity as a layperson to coherently present it to the judge or jury himself." *Pruitt v. Mote*, 503 F.3d 647, 655 (7th Cir. 2007). Five non-exclusive factors to be considered include: (1) the merits of the claim for relief; (2) the ability of plaintiff to investigate crucial facts unaided; (3) whether the nature of the evidence indicates the truth will more likely be exposed when both sides have counsel; (4) the indigent's capability to present the case; and (5) the complexity of the legal issues involved. *Jackson*, 953 F.2d at 1072.

In his motion, Coil states that he has no prior legal experience in civil suits and that he is indigent and cannot afford to hire counsel. Since this is true of most pro se prison litigants, it is not a reason to recruit counsel in this particular case. Coil also states that he has mental health issues and limited formal education. While this does weigh in favor of appointing counsel, it is not dispositive, particularly because Coil has done an able job representing himself thus far in spite of his mental health issues. His pleadings are legible and neatly organized, and he has been able to identify most of the defendants in his case without outside assistance.

Other factors weigh against seeking volunteer counsel at this time. For example, defendants have only recently answered, and no dispositive motions have yet been filed in this case, making it too early to know whether Coil's case is sufficiently meritorious to warrant recruitment of counsel. Additionally, the law on excessive force and deliberate indifference claims is well-established and was explained to Coil in the order granting him leave to proceed. Furthermore, Coil's claims appear to depend primarily on the facts surrounding the events he alleges, events for which he was present and with which he should therefore be personally familiar, which limits the need for further investigation. Finally, as noted above, plaintiff has done an able job in this lawsuit so far, suggesting that this case does not exceed his capacity to litigate as a layperson.

The current denial of counsel is without prejudice as to later reconsideration of the motion, since it is possible that the issues involved in this case are more complicated than they appear right now or that more investigation and discovery than currently seems necessary will be required. While the court is not convinced that this suit is sufficiently complex to surpass Coil's ability to present the case on his own, Coil may certainly renew

his motion if the circumstances change and it becomes clear that this case exceeds his capacity as a layperson to litigate.

ORDER

IT IS ORDERED that plaintiff Bobby Coil's Motion to Appoint Counsel (dkt. #11) is DENIED without prejudice.

Entered this 12th day of February, 2014.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge